OFFICE OF THE ATTORNEY GENERAL OF TEXAS

AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Ernest Guinn
County Attorney
El Paso, Texas

Dear Sir:

Opinion No. O-4176
Re: Whether the property of an unmarried daughter is exempt from taxation under Article 8, Section 1-a of the Constitution of Texas after the death of her dependent mother.

We acknowledge receipt of your request for an opinion of this department on the following question:

"A family consists of an elderly widowed mother and her unmarried adult daughter. The daughter supports the family and owns the house in which they live, the mother being dependent. After the death of the mother, does the daughter's homestead right remain for the purpose of exemption from State taxes?"

Article 8, Section 1-a of the Constitution of Texas provides as follows:

"Three Thousand Dollars ($3,000.00) of the assessed taxable value of all resident homesteads as now defined by law shall be exempt from all taxation for all State purposes; provided that this exemption shall not be applicable to that portion of the State ad valorem taxes levied for State purposes remitted within those counties or other political subdivision now receiving any remission of State taxes, until the expiration of such period of remission, unless before the expiration of such period the board or governing body of any one or more of such counties or political subdivisions

> shall have certified to the State Comptroller that the need for such remission of taxes has ceased to exist in such county or political subdivision; then this Section shall become applicable to each county or political subdivision as and when it shall become within the provisions hereof."

It will be noted that the above provisions of our Constitution provides that the exemption shall apply to all resident homesteads "as now defined by law." It was held in the case of Roco v. Green, 50 Tex. 483, speaking through Associate Justice Bonner, that a single person could be the head of a family and as such claim a homestead. The court in said case set out the following rules to determine whether or not the relationship of a family, as contemplated by law, exists:

> "1. It is one of a social status, not of mere contract.
>
> "2. Legal or moral obligation on the head to support the other members.
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> "3. Corresponding state of dependence on the part of the other members for this support."

Section 50, Article 16, of our Constitution provides, among other things,"The homestead of a family shall be and is hereby protected from forced sale, for the payment of all debts except . . . the taxes due thereon . . . "

Section 51 of said Article defines a homestead, insofar as we are here concerned, as follows:

> "The homestead in a city, town or village, shall consist of lot, or lots, not to exceed in value five thousand dollars, at the time of their designation as the homestead, without reference to the value of any improvements thereon; provided, that the same shall be used for the purpose of a home, or as a

> place to exercise the calling or business of the head of a family."

Under the above quoted facts and numerous decisions of our appellate courts, we think there can be no question but that the daughter and her aged and dependent mother constituted a "family" and the house, together with the lot or lots used in connection therewith, owned by the daughter, in which they lived, constituted the "resident homestead" of the family while it was so occupied, within the meaning of those terms as used in the constitutional provisions above quoted, and, as such resident homestead, it was exempt from taxation to the same extent as any other resident homestead is exempt under the provisions of Section 1-a of Article XIII of the Constitution. Rocc v. Green, 50 Tex. 489; Wolfe v. Buckley, 52 Tex. 641; Barry v. Hale (Civ. App.), 21 S. W. 783; Drought & Co. v. Stallworth (Civ. App.), 100 S. W. 188; Hutchenrider et al v. Smith (Com. App.) 242 S. W. 205; Woods et al v. Alvarado State Bank (Sup. Ct.), 19 S. W. (2d) 35; Daniel v. Cook et al. (Civ. App.), 70 S. W. (2d) 1024; McCusker v. Field (Civ. App.), 76 S. W. (2d) 816; Standard Paving Co. v. Tolson et al. (Civ. App.), 86 S. W. (2d) 789; Chamlee v. Chamlee (Civ. App.), 113 S. W. (2d) 290; Reconstruction Finance Corporation v. Burgess (Civ. App.), 155 S. W. (2d) 977, and authorities there cited.

So far as we have been able to ascertain the exact question has not been presented to our courts, nor have we been able to find any case from other jurisdictions in point.

The question of whether the homestead rights of the daughter continued after the death of her mother is the real question with which we are here concerned. If such rights continued, then your question must be answered in the affirmative, for one of those rights is the exemption of the homestead from taxation to the extent provided in Section 1-a of Article 8 of the Constitution.

We think that the case of Woods v. Alvarado State Bank, supra, as construed in Daniel v. Cook, supra, has

definitely settled this question.

In Woods v. Alvarado State Bank, it was said:

> "In view of our constitutional and statutory provisions concerning homestead rights, we have concluded that in this state the homestead is to be regarded as an estate created not only for the protection of the family as a whole, but for the units of the family, including those who survive, and embracing the head of the family at the time of its dissolution, whether the dissolution has been brought about by death or by dispersal, as distinguished from a mere privilege accorded the head of the family for the benefit of the family as a whole."

The opinion of the Court of Civil Appeals, 275 S. W. 187, contains a full statement of the facts in the case from which the foregoing quotation was taken.

> "On May 31, 1901, a divorce was granted in the district court of Johnson county, Tex. in favor of Carrie Woods against J. D. Woods. At the time said divorce was granted, the said parties, being husband and wife, had two children, Pearl, about 10 years of age, and a boy between 8 and 9 years of age, and had, with said children, been occupying as their homestead about 104 acres of land, which was the separate property of appellant J. D. Woods. In the divorce decree this 104 acres of land was set apart to appellant J. D. Woods as his separate property, and the custody of the two children was awarded to their mother, Carrie Woods. The children, however, continued to live on the home place with their father, 2, 3 or 4 years, until Pearl Woods, the girl, was 12 or 13 years of age, when they both went to Oklahoma. Pearl, the girl never returned to live with her father, but continued to live in Oklahoma, where she married in 1906 when about 14 years of age. The boy, in about 1906, returned to Texas, and made several

trips from Texas to Oklahoma, living with his father a part of the time and elsewhere a part of the time, until he was about 21 years of age, when he married and settled in Oklahoma. The boy has been married and living in Oklahoma 10 years. The girl has been married and living with her husband in Oklahoma for the last 18 or 20 years. Between the date the divorce was granted in 1901 and about 1907, and while said children, or at least one of them, was living with appellant a part of the time, he bought several small tracts of land, aggregating about 124 acres, adjoining said original 104 acres, making a total of about 228 acres, all in one block. Appellant has never remarried, and for the last 10 or 12 years has lived on said land alone.

"On July 3, 1919, appellant J. D. Woods executed his note in the sum of $6,327, due and payable to the appellee bank on July 3, 1920. On March 22, 1920, a little more than three months before the maturity of said note, appellant executed a deed conveying all of said land to his daughter, Mrs. Pearl Hale, who resides with her husband at Fairview, Okl. The consideration stated in this deed was '$10 paid and love and affection for daughter, and settling with her for her interest in my estate, valued at $4,000.'

"Appellant having made default in the payment of said note, appellee bank brought suit on same, and recovered a judgment against appellant for $8,582. Thereafter, the bank caused an execution to be issued and levied upon 214 acres of said 228 acres, whereupon appellant and his daughter, Pearl Hale, and husband, procured a temporary injunction restraining the sale. On the trial of this injunction case before the court without a jury, the court perpetuated said injunction as to the 104 acres, the land appellant owned at the time the divorce was granted, but dissolved said injunction as to the remainder of the 214 acres,

> or approximately 110 acres, the land acquired by appellant after the divorce was granted. Both sides excepted to the judgment of the court. The case is before us on assignments by appellant, contending the whole of said land was exempt to J. D. Woods as a homestead, and therefore not subject to execution, and, on cross-assignments by appellee, contending no part of said land was exempt to appellant as a homestead."

The Supreme Court held that "Woods was entitled to his 200-acre homestead, and that the trial court should have set apart that amount of land to him or his vendees."

The facts in Daniel v. Cook, supra, as set out in the opinion of the court, are as follows:

> "In this suit brought by W. S. Daniel against Mrs. M. J. Cook, a widow, the plaintiff, among other things, sought to foreclose an attachment lien upon 125 acres of land in Jones county, belonging to the defendant.
>
> "Mrs. Cook defended on the ground that the land was her homestead, and for that reason exempt. Mrs. Cook, on or about September 17, 1907, after she became a widow, acquired, by purchase, the land in question, and together with eight minor children of hers moved upon and occupied it as a home. She alleged that it continued to be her homestead up to the time of the levy of the attachment.
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> "In reply to this contention, Daniel pleaded that Mrs. Cook had long since abandoned the property as her homestead, and had acquired, owned, and lived upon other land in Taylor county and elsewhere, by reason whereof the land in controversy had long since lost its homestead character. The evidence showed that Mrs. Cook, with two unmarried daughters, moved from the farm to Abilene in 1924, and had not since occupied the

farm in question. At the time suit was filed Mrs. Cook with her only remaining unmarried daughter was living with another married daughter in California. The single daughter was about 27 years of age.

"The jury to whom the case was submitted on special issues found that: (a) Mrs. Cook with unmarried members of her family had occupied the farm as a homestead for several years prior to 1923; (b) that she at all times since 1923 had been the head of a family consisting of herself and unmarried dependent child or children; (c) that she had at all times since 1923 intended to move with the unmarried dependent member, or members, of her family back to the farm and make it a permanent home for herself and such unmarried dependent member, or members, of her family; (d) and that Mrs. Cook, as the head of a family, never intended at any time to use any of the property acquired by her in Abilene as a permanent home for herself and unmarried dependent member, of members, of her family. The trial judge, after refusing a requested peremptory instruction for Daniel, gave judgment for Mrs. Cook, denying foreclosure of the attachment lien. From this judgment, Daniel has appealed."

That part of the court's opinion pertaining to the question we are here considering is as follows:

"We are further of the opinion that since the uncontroverted evidence showed that prior to 1923 the property had been the homestead of Mrs. Cook, and since the jury found, based upon evidence the sufficiency of which is not directly challenged, that at all times since and prior to the time she moved away from the farm she intended to move back and make it her home, and that in the acquisition and use of other property in Abilene she never intended to make the latter

> her permanent home, her status as to the homestead exemption herein asserted was the same as if she had never moved away. In other words, she continuously occupied the property as her homestead up to and including the time of the levy of the attachment. If so, the question is: Was it necessary that there be any remaining constituent of the family other than Mrs. Cook herself? This question, we think, must be regarded as settled by the opinion in Woods v. Alvarado State Bank, 118 Tex. 586, 19 S. W. (2d) 35. Counsel for appellee, in argument, sought to show that the discussion of this point in said opinion was dicta. A distinction is argued, based upon whether the homestead is acquired while both husband and wife are living, or by one of the spouses after the marriage relation, for any reason, has been dissolved. It is well settled, and seems to be conceded, that if the homestead is acquired at a time when husband and wife are living together, the exemption continues so long as it remains occupied, regardless of the fact that no constituent members of the family remain, other than the survivor. We are unable to see any good reason for making the distinction suggested. The Supreme Court's opinion referred to, we think, must be regarded as holding that there is no such distinction. In that case the land in controversy was acquired after dissolution of the marriage relation. The manner of dissolution is unimportant. The court's opinion could not be correct on the facts of that case if the distinction here insisted upon should be held to exist. The discussion of the point was, therefore, we think, not merely dicta."

It seems to be the settled law of this State that when a homestead is once established the rights belonging thereto do not cease to exist by reason of the death or dispersal of the constituent members of the family, but such rights continue for the protection of the surviving units of the family, including the head

of the family. In the instant case, the unmarried adult daughter and her mother, while living together, constituted a family, with the daughter as its head. Therefore, we see no good reason to hold that the death of the mother would have the effect of dissolving the homestead rights of the daughter that had been acquired while the mother was living. The fact that the daughter is the sole survivor of the family is unimportant and insufficient to warrant a contrary conclusion.

We answer your question in the affirmative.

Yours very truly

ATTORNEY GENERAL OF TEXAS

APPROVED JAN 9, 1942

FIRST ASSISTANT
ATTORNEY GENERAL

By Richard H. Cocke
Richard H. Cocke
Assistant

RHC:FS

APPROVED
OPINION
COMMITTEE
BY BWB
CHAIRMAN